

ORDINANCE NO. 2007-26 (R)

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING THE ESCONDIDO MUNICIPAL
ELECTION CAMPAIGN CONTROL
ORDINANCE, CHAPTER 2, ARTICLE 7
REGARDING CAMPAIGN CONTRIBUTIONS
FOR LOCAL ELECTIONS

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN
as follows:

WHEREAS, pursuant to the authority granted by Government Code section 81013, the
Escondido City Council enacted Article 7 of Chapter 2 of the Escondido Municipal Code in
1983 to supplement the Political Reform Act of 1974, as amended; and

WHEREAS, further amendments were made to Article 7 of Chapter 2 of the Escondido
Municipal Code in 1986, 1997 and 2002; and

WHEREAS, the Escondido City Council now desires to increase local campaign
contribution limits and State law requires changes to Article 7 of Chapter 2 of the Escondido
Municipal Code.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as
follows:

SECTION 1. That Article 7 of Chapter 2 of the Escondido Municipal Code is
amended to read as follows:

Article 7. Controls on Campaign Contributions

Sec. 2-100. Purpose and intent.

Inherent to the high cost of election campaigning is the problem of improper
influence, real or potential, exercised by campaign contributors over elected
officials. It is the purpose and intent of the city council of the City of Escondido in

enacting this article to preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of municipal election campaigns; and to provide full and fair enforcement of all the provisions of this division. This article is enacted in accordance with the terms of Section 7 of Article XI of the Constitution of the State of California. The contribution limitations of this chapter shall not apply to ballot measure elections or to that portion of a recall election in which the electorate determines whether or not to recall an officeholder, but shall apply to all candidate elections, including the candidate election portion of a consolidated recall election.

Sec. 2-101. Citation.

This article shall be cited as the Escondido Municipal Election Campaign Control Ordinance.

Sec. 2-102. Definitions.

As used in this article, the listed words or phrases shall be defined as follows:

- (1) Candidate shall mean any individual who is listed on the ballot or who has begun to circulate nominating petitions or authorized others to circulate petitions in his or her behalf, for nomination for or election to any elective city office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution with a view to bringing about his or her nomination or election to any city office, whether or not the specific elective office for which nomination or election may be sought is known at the time the contribution is received or the expenditure is made and whether or not candidacy has been announced or a declaration of candidacy filed at such time. "Candidate" also includes any holder of any city office who is the subject of a recall election.
- (2) City office shall mean the offices of mayor, councilmember and treasurer of the City of Escondido.
- (3) Committee shall mean any person or combination of persons who directly or indirectly receives contribution or makes expenditures or contributions or the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, including any committee or subcommittee of a political party, whether national, state or local, if:
 - (a) Contributions received total five hundred dollars (\$500.00) or more in a calendar year; or
 - (b) Expenditures and contributions made, total five hundred dollars (\$500.00) or more in a calendar year; or

(c) Contributions made directly to candidates and committees totaling five hundred dollars (\$500.00) or more in a calendar year.

(4) Contribution shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

The term "contribution" shall include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting of credit in the normal course of business; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended to an equal basis to all candidates for the same office; and the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

The term "contribution" shall further include any payment received by a committee from another committee.

The term "contribution" shall not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution.

The term "contribution" shall not include the cost of an event held in honor or behalf of a candidate or committee when the total cost of the event amounts to no more than five hundred dollars (\$500.00) and when the event is not held for the purpose of obtaining contributions to the candidate or committee.

Notwithstanding the foregoing definition, the term "contribution" shall not include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her. Further, the term "contribution" shall not include an independent expenditure, as defined by State law, and shall not include payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure provided these payments are not made for general advertising such as broadcasting, billboards, and newspaper advertisements.

(5) Controlled committee shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if he or she, his or her agent or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(6) Election shall mean any primary, general or special election held in the City of Escondido, including the candidate election portion of a consolidated recall election. The primary and general or special elections are separate elections for purposes of this article.

(7) Enforcement authority shall mean the officer, agent or organization designated by action of the city council to enforce the provisions of this article. Nothing in this article shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this article under any circumstances where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.

(8) Expenditure shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

(9) Independent expenditure:

(a) Shall mean an expenditure by a person for a communication expressly advocating the support of or opposition to a clearly identified candidate which is not made with the cooperation or prior consent of, a candidate, his or her agent, or a controlled committee of a candidate.

(b) For the purpose of this definition:

1. "Expressly advocating" shall mean any communication containing a message advocating support or opposition. Content may include but not be limited to the name of a candidate, the Title of a measure or any expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," or "reject" and an identifying phrase.

2. "Clearly identified candidate" shall mean that the name of a candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous references.

3. "Made with the cooperation or with the prior consent of, or in consultation with, or at the behest or suggestion of, a candidate or his or her agent or a controlled committee of a candidate" shall mean any arrangement, coordination, or direction by a candidate, agent or committee prior to the publication, display or broadcast of the communication.

4. "Agent" shall mean any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities, he or she may authorize expenditures.

(c) An expenditure not qualifying under this section as an independent expenditure shall be considered a contribution to the candidate.

(10) Measure shall mean any proposition which is submitted to a popular vote at an election by action of the city council or which is submitted or is intended to be submitted to a popular vote at a city election by initiative or referendum procedure whether or not it qualifies for the ballot.

(11) Payment shall mean payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(12) Person shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, and any other organization or group of persons acting in concert.

Sec. 2-103. Campaign contributions; limitations.

(a) No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all committees supporting or opposing such candidate, to exceed five hundred dollars (\$500.00). The limit set forth in this subsection may be adjusted every odd numbered year pursuant to Section 2-103(e).

(b) Extensions of credit for a period of more than thirty (30) days are prohibited. Extensions of credit of more than five hundred dollars (\$500.00) are prohibited. A candidate shall not lend his or her own campaign more than one hundred thousand dollars (\$100,000.00) per election. A candidate may not charge interest on any loan he or she made to his or her campaign.

(c) The terms of this section are applicable to any contributions made to a candidate or committee, whether used by such candidate or committee to finance a current campaign, to pay deficits incurred in prior campaigns, or otherwise.

(d) If any person is found guilty of violating the terms of this section, the amount of funds received constituting such violation shall be paid by the candidate or committee treasurer who received such funds to the city treasurer for deposit in the general fund of the city.

(e) The dollar limitation set forth in subdivision (a) of this section shall be adjusted every odd numbered year commencing in 2009. The City Clerk shall adjust the contribution limits to reflect any changes in the Consumer Price Index for the San Diego area for the two-year period ending December 31 of the previous year. Adjustments shall be rounded to the nearest ten dollars. The City Clerk shall publish a public notice of any adjustments by March 1, or as soon as practicable, following the Bureau of Labor Statistic's release of the applicable Consumer Price Index data.

Sec. 2-104. Acceptance of campaign contributions; campaign contribution checking account.

Candidates may accept contributions only during the time frame set forth in the Political Reform Act of 1974, as amended. Every candidate and every committee receiving contributions with the aggregate amount of five hundred dollars (\$500.00) or more in any calendar year shall establish one campaign contribution checking account at an office of a bank or other financial institution providing checking account services located in the City of Escondido. Upon opening of an account, the name of the bank or other financial institution and number thereof shall be filed with the city clerk and the enforcement authority within twenty-four (24) hours. Upon opening of an account, all contributions of money or checks, or anything of value converted by such candidate or committee to money or a check, made to a candidate, to a person on behalf of a candidate, to a committee supporting or opposing a candidate, or to a person on behalf of a committee supporting or opposing a candidate shall be placed in the candidate's or committee's checking account within three (3) business days. No contribution shall be deposited to a campaign contribution checking account without the receipt by the candidate or committee of that information required by the Political Reform Act of 1974, as amended, concerning the contribution to be deposited. Any contribution not deposited within three (3) business days shall be returned to the contributor as soon as possible after the third business day, but no later than ten (10) business days after receipt of the contribution. A candidate and a committee formed solely for the purpose of acting in aid of the nomination or election of the candidate may establish and maintain one joint checking account for the candidate and the committee.

Sec. 2-105. Disbursements.

Funds shall be disbursed from a campaign contribution checking account established pursuant to section 2-104 only by check signed by the candidate or by the candidate's or committee's campaign treasurer or designated agents of the campaign treasurer. Each candidate or committee shall maintain a written record of the payee of each check drawn on a campaign contribution checking account and an itemized record of the goods and services for which each check is issued.

Sec. 2-106. Petty cash fund.

Section 2-104 notwithstanding, the candidate or campaign treasurer or other designated agents authorized to issue checks on a campaign contribution checking account may disburse to the candidate or committee establishing the checking account an amount not greater than twenty dollars (\$20.00) per week to be used for petty cash purposes by the candidate or committee. An amount not greater than forty dollars (\$40.00) per week may be disbursed to a candidate and committee jointly establishing a campaign contribution checking account, to be used for petty cash purposes.

Sec. 2-107. Accountability.

Every candidate or committee establishing a campaign contribution checking account pursuant to this article shall make available on demand to any public officer having legal authority to enforce this article, the details of any such checking account requested and the records supporting it. Every candidate or committee establishing a campaign contribution checking account shall maintain a record of every contribution received and disbursement made from the checking account, which record shall include, but not be limited to, copies of checks, canceled checks, bank records, bills and invoices. Such records shall be kept by the candidate or treasurer of the committee establishing the account for the periods specified in Section 18401 of Title 2, Division 6 of the California Administrative Code. Each candidate and committee shall, on demand, make available to any public officer having authority to enforce this article, a written declaration of consent that such officer may have access to the campaign contribution checking account.

Sec. 2-108. Campaign statements.

Each candidate and committee shall file campaign statements in the time and manner required by the Political Reform Act of 1974 as amended (Government Code Sections 84100 et seq.) and compliance with the requirements of that Act shall be deemed to be compliance with this section, provided that every campaign contribution, regardless of amount, is included in the statement.

Sec. 2-109. Cash and anonymous contributions.

No cash or anonymous contributions shall be accepted by any candidate or committee. Any such contributions received shall be paid promptly from available campaign funds, if any, to the city treasurer for deposit in the general fund of the city.

Sec. 2-110. Assumed name contributions.

No contribution shall be made, directly or indirectly, by any person or combination of persons acting jointly in a name other than the name by which they are identified for legal purposes, nor in the name of another person or

combination of persons. No person shall make a contribution in his or her or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. When it is discovered by the campaign treasurer that a contribution has been received in violation of this section, the campaign treasurer shall pay promptly, from available campaign funds, if any, the amount received in violation of this section to the city treasurer for deposit in the general fund of the city.

Sec. 2-111. Campaign expenditures; uncontrolled by candidate or committee.

Persons or organizations not subject to the control of a candidate or committee but who make independent expenditures for or against a candidate or committee shall indicate clearly on any material published, displayed or broadcast that it was not authorized by a candidate or committee, when such expenditures in whole or part would have been covered by the provisions of this article if they were subject to the control of a candidate or committee.

Sec. 2-112. Suppliers of goods and services; disclosure of records required.

No person who supplies goods or services or both goods and services to a candidate or committee for use in connection with the campaign of the candidate shall refuse knowingly to divulge or disclose to the enforcement authority his or her record of any expenditures made by the candidate or committee in payment for such goods or services or both.

Sec. 2-113. Duties of city clerk.

In addition to other duties required under the terms of this article, the city clerk shall:

- (1) Supply appropriate forms and manuals prescribed by the state fair political practices commission. These forms and manuals shall be furnished to all candidates and committees, and to all other persons required to report.
- (2) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of state law.
- (3) Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by state law.
- (4) Report apparent violations of this article and applicable state law to the enforcement authority.
- (5) Compile and maintain a current list of all statements or parts of statements filed pertaining to each candidate.

(6) Cooperate with the enforcement authority in the performance of the duties of the enforcement authority as prescribed in this article and applicable state law.

Sec. 2-114. Enforcement authority; duties, complaints, legal action, investigatory powers.

(a) The city attorney shall not investigate or prosecute any alleged violation of this article, but shall defend the constitutionality and legality of this article in any civil proceeding in which the city or the city council is a party.

(b) The enforcement authority shall enforce the provisions of this article.

(c) Special counsel shall be selected as the enforcement authority by the city attorney and appointed by the city council at least one hundred and eighty (180) days prior to a city election. Should the appointment of additional special counsel become necessary or appropriate, the city attorney shall select, and the city council shall appoint, such additional special counsel as may be required. The review of complaints of violation of this article and any criminal prosecutions under this article shall be commenced by special counsel. Special counsel shall also commence and prosecute any necessary administrative proceeding or civil litigation to compel compliance with this article or to enjoin conduct in violation of this article. No enforcement or prosecution or action of special counsel shall be subject to the review or control of the city council of the city attorney.

(d) Any person residing in the City of Escondido who believes that a violation of any portion of this article has occurred may file a written complaint requesting investigation of such violation by the enforcement authority. If the enforcement authority determines that there is reason to believe a violation of this article has occurred, it shall conduct an investigation and may commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this article. Whenever the enforcement authority has reason to believe a willful violation of this article has occurred or is about to occur, it may institute such legal action at such time as it deems necessary to prevent further violations. The enforcement authority may decline to investigate any alleged violation of this article which is also an alleged violation of state law and is the subject of a complaint filed with the Fair Political Practices Commission, until the investigation of that complaint is complete.

(e) The enforcement authority shall have such investigative powers as are necessary for the performance of the duties prescribed in this article and may demand and be furnished records of campaign contributions and expenses at any time. In the event that production of such records is refused, the enforcement authority may commence civil litigation to complete such production.

(f) The enforcement authority shall determine whether required statements and declarations have been filed as required and, if so, whether they conform with the requirements of this article.

(g) The enforcement authority shall be immune to liability for the enforcement of this article.

(h) Any action alleging violation of this article must be commenced within two years of the time the alleged violation occurred.

Sec. 2-115. Penalties.

Any person who knowingly or willfully violates any provision of this article is guilty of a misdemeanor. In addition to any other penalty provided by law, any willful or knowing failure to report contributions, done with intent to mislead or deceive, shall be punishable by a fine of not less than one thousand dollars (\$1,000.00).

Sec. 2-116. Effect of violation on outcome of election.

If, after election, a candidate is convicted of a violation of any provision of this article, the election to office of such candidate shall be void and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if is not an incumbent, would otherwise take office, whichever occurs later. In such event, the vacancy shall be filled in accordance with the procedures provided for the filing of vacant city offices. If a candidate is convicted of a violation of this article at any time prior to election, his or her candidacy shall be terminated immediately and such candidate shall be no longer eligible for election. Any person convicted of a violation of this article shall be ineligible to hold city elective office for a period of five (5) years from and after the date of his conviction.

Sec. 2-117. City measures; exemptions.

This article shall not apply to contributions or expenditures by a committee or a person on behalf of a committee supporting or opposing a city measure.

Sec. 2-118. Rules of construction.

This article shall be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this article which does not directly affect the jurisdiction of the council or the city to control campaign contributions and expenditures shall avoid the effect of this article.

Sec. 2-119. Severability.

If any provision of this article, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the article and the applicability of such provision to other persons and circumstances shall not be affected.

SECTION 2. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding will not affect the validity of the remaining portions hereof.

SECTION 3. That all ordinances, or parts of ordinances, in conflict herewith are hereby repealed.

SECTION 4. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time, within 15 days of its passage, in a newspaper of general circulation, printed and published in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 19th day of September, 2007 by the following vote to wit:

AYES : Councilmembers: ABED, DANIELS, GALLO

NOES : Councilmembers: WALDRON, PFEILER

ABSENT : Councilmembers: NONE

APPROVED:

(d)(5)

LORI HOLT PFEILER, Mayor of the
City of Escondido, California

ATTEST:

(d)(5)

MARSHA WHALEN, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, MARSHA WHALEN, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2007-26 (R) passed at a regular meeting of the City Council of the City of Escondido held on the 19th day of September, 2007, after having been read at the regular meeting of said City Council held on the 12th day of September, 2007.

(d)(5)

MARSHA WHALEN, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2007-26 (R)